

Proposed technical correction:

SECTION #. G.S. 15A-151.5 reads as rewritten:

"§ 15A-151.5. Prosecutor access to expunged files.

(a) Notwithstanding any other provision of this Article, the Administrative Office of the Courts shall make all confidential files maintained under G.S. 15A-151 electronically available to all prosecutors of this State if the criminal record was expunged on or after July 1, 2018, under any of the following:

- (1) G.S. 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.
 - (2) G.S. 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.
 - (3) G.S. 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.
 - (4) G.S. 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.
 - (5) G.S. 15A-145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.
 - (6) G.S. 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.
 - (7) G.S. 15A-145.6. Expunctions for certain defendants convicted of prostitution.
 - (7a) G.S. 15A-145.7. Expunction of records for first offenders under 20 years of age at the time of the offense of certain offenses.
 - ★ (7b) G.S. 15A-145.8A. Expunction of records for offenders under the age of 18 at the time of ~~conviction~~ commission of certain misdemeanors and felonies upon completion of the sentence.
 - (7c) G.S. 15A-145.9. Expunction of records of certain offenses committed by human trafficking victims.
 - (8) G.S. 15A-146(a). Expunction of records when charges are dismissed.
 - (9) G.S. 15A-146(a1). Expunction of records when charges are dismissed.
- (b) For any expungement granted on or after July 1, 2018, the record of a criminal conviction expunged under subdivisions (1) through (7b) of subsection (a) of this section may be considered a prior conviction and used for any of the following purposes:
- (1) To calculate prior record level and prior conviction level if the named person is convicted of a subsequent criminal offense.
 - (2) To serve as a basis for indictment for a habitual offense pursuant to G.S. 14-7.1 or G.S. 14-7.26.
 - (3) When a conviction of a prior offense raises the offense level of a subsequent offense.
 - (4) To determine eligibility for relief under G.S. 90-96(a).
 - (5) When permissible in a criminal case under Rule 404(b) or Rule 609 of the North Carolina Rules of Evidence.
- (c) For any expungement granted on or after July 1, 2018, the information maintained by the Administrative Office of the Courts, and made available under subsection (a) of this section, ~~shall be~~ is prima facie evidence of the expunged conviction for the purposes provided in subsection (b) of this section and ~~shall be~~ is admissible into evidence. The expungement of a conviction shall

not serve as a basis to challenge a conviction or sentence entered before the expungement of that conviction." (2017-195, s. 1; 2019-158, s. 4(c); 2020-35, s. 2(a); 2020-69, s. 8(a), (b); 2020-78, s. 10.1(a), (b).)

Explanation: In addition to replacing legalese with plain English, this proposed technical correction fixes a reference to the catchline of G.S. 15A-145.8A by replacing the word "conviction" with "commission". (Please note that S.L. 2020-35, which enacted this provision, set this provision out as G.S. 15A-145.8; it was renumbered as G.S. 15A-145.8A.)

Background:

§ 15A-145.8A. Expunction of records for offenders under the age of 18 at the time of commission of certain misdemeanors and felonies upon completion of the sentence.

(a) A person or the district attorney may file, in the court of the county where the person was convicted, a petition for expunction from the person's criminal record of any misdemeanor or Class H or I felony not excluded by subsection (b) of this section if the offense was committed prior to December 1, 2019, and while the person was less than 18 years of age, but at least 16 years of age. The petition shall not be filed until (i) any active sentence, period of probation, and post-release supervision ordered for the offense has been served and (ii) the person has no restitution orders for the offense or outstanding civil judgments representing amounts ordered for restitution for the offense.

(b) An offense is not eligible for expunction under this section if it is (i) a violation of the motor vehicle laws under Chapter 20 of the General Statutes, including any offense involving impaired driving as defined in G.S. 20-4.01(24a) or (ii) an offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.

(c) If the petition was not filed by the district attorney, the petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing. Upon request by the victim, the victim has a right to be present at any hearing on the petition for expunction and the victim's views and concerns shall be considered by the court at such hearing.

(d) If the court, after hearing, finds that (i) the offense was a misdemeanor or Class H or I felony eligible for expunction under this section, (ii) the offense was committed prior to December 1, 2019, and while the person was less than 18 years of age, but at least 16 years of age, (iii) any active sentence, period of probation, and post-release supervision ordered for the offense was completed, and (iv) the person has no restitution orders for the offense or outstanding civil judgments representing amounts ordered for restitution for the offense, the court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information, and that the record be expunged from the records of the court. A person convicted of multiple offenses shall be eligible to have those convictions expunged pursuant to this section.

(e) Any petition for expunction under this section shall be on a form approved by the Administrative Office of the Courts and shall be filed with the clerk of superior court in the county where the person was convicted. Upon order of expunction, the clerk shall forward the order to the Administrative Office of the Courts.

(f) No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose.

(g) The court shall also order that the conviction be expunged from the records of the court. The court shall direct all law enforcement agencies, the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the petitioner's conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(h) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent. (2020-35, s. 1(a).)

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019**

**SESSION LAW 2020-35
SENATE BILL 562**

AN ACT TO MAKE VARIOUS REVISIONS TO THE EXPUNCTION LAWS OF THIS STATE.

The General Assembly of North Carolina enacts:

PART I. EXPUNCTIONS FOR OFFENSES COMMITTED PRIOR TO THE EFFECTIVE DATE OF THE LEGISLATION KNOWN AS RAISE THE AGE

SECTION 1.(a) Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-145.8. Expunction of records for offenders under the age of 18 at the time of commission of certain misdemeanors and felonies upon completion of the sentence.

(a) A person or the district attorney may file, in the court of the county where the person was convicted, a petition for expunction from the person's criminal record of any misdemeanor or

Class H or I felony not excluded by subsection (b) of this section if the offense was committed prior to December 1, 2019, and while the person was less than 18 years of age, but at least 16 years of age. The petition shall not be filed until (i) any active sentence, period of probation, and post-release supervision ordered for the offense has been served and (ii) the person has no restitution orders for the offense or outstanding civil judgments representing amounts ordered for restitution for the offense.

(b) An offense is not eligible for expunction under this section if it is (i) a violation of the motor vehicle laws under Chapter 20 of the General Statutes, including any offense involving impaired driving as defined in G.S. 20-4.01(24a) or (ii) an offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.

(c) If the petition was not filed by the district attorney, the petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing. Upon request by the victim, the victim has a right to be present at any hearing on the petition for expunction and the victim's views and concerns shall be considered by the court at such hearing.

(d) If the court, after hearing, finds that (i) the offense was a misdemeanor or Class H or I felony eligible for expunction under this section, (ii) the offense was committed prior to December 1, 2019, and while the person was less than 18 years of age, but at least 16 years of age, (iii) any active sentence, period of probation, and post-release supervision ordered for the offense was completed, and (iv) the person has no restitution orders for the offense or outstanding civil judgments representing amounts ordered for restitution for the offense, the court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information, and that the record be expunged from the records of the court. A person convicted of multiple offenses shall be eligible to have those convictions expunged pursuant to this section.

(e) Any petition for expunction under this section shall be on a form approved by the Administrative Office of the Courts and shall be filed with the clerk of superior court in the county where the person was convicted. Upon order of expunction, the clerk shall forward the order to the Administrative Office of the Courts.

(f) No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose.

(g) The court shall also order that the conviction be expunged from the records of the court. The court shall direct all law enforcement agencies, the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the petitioner's conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(h) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office

of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent."

SECTION 1.(b) This section becomes effective December 1, 2019, and applies to offenses committed before that date. The Administrative Office of the Courts shall develop and disseminate the forms required by this section no later than September 1, 2020.

PART II. PROSECUTOR AND LAW ENFORCEMENT ACCESS TO EXPUNGED FILES

SECTION 2.(a) G.S. 15A-151.5 reads as rewritten:
"§ 15A-151.5. Prosecutor access to expunged files.

(a) Notwithstanding any other provision of this Article, the Administrative Office of the Courts shall make all confidential files maintained under G.S. 15A-151 electronically available to all prosecutors of this State if the criminal record was expunged on or after July 1, 2018, under any of the following:

- (1) G.S. 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.
- (2) G.S. 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.
- (3) G.S. 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.
- (4) G.S. 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.
- (5) G.S. 15A-145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.
- (6) G.S. 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.
- (7) G.S. 15A-145.6. Expunctions for certain defendants convicted of prostitution.
- (7a) G.S. 15A-145.7. Expunction of records for first offenders under 20 years of age at the time of the offense of certain offenses.
- (7b) G.S. 15A-145.8. Expunction of records for offenders under the age of 18 at the time of conviction of certain misdemeanors and felonies upon completion of the sentence.
- (8) G.S. 15A-146(a). Expunction of records when charges are dismissed.
- (9) G.S. 15A-146(a1). Expunction of records when charges are dismissed.

(b) For any expungement granted on or after July 1, 2018, the ~~expunged criminal records~~ record of a criminal conviction expunged under subdivisions (1) through ~~(7)~~ (7b) of subsection (a) of this section may be ~~used~~ considered a prior conviction and used for any of the following purposes:

- (1) ~~to~~ To calculate prior record level and prior conviction level if the named person is convicted of a subsequent criminal offense.
- (2) To serve as a basis for indictment for a habitual offense pursuant to G.S. 14-7.1 or G.S. 14-7.26.

- (3) When a conviction of a prior offense raises the offense level of a subsequent offense.
- (4) To determine eligibility for relief under G.S. 90-96(a).
- (5) When permissible in a criminal case under Rule 404(b) or Rule 609 of the North Carolina Rules of Evidence.

(c) For any expungement granted on or after July 1, 2018, the information maintained by the Administrative Office of the Courts, and made available under subsection (a) of this section, shall be prima facie evidence of the expunged conviction for the purposes ~~of calculating prior record level of the named person provided in subsection (b) of this section~~ and shall be admissible into ~~evidence at a subsequent criminal sentencing hearing.~~ evidence. The expungement of a conviction shall not serve as a basis to challenge a conviction or sentence entered before the expungement of that conviction."

SECTION 2.(b) G.S. 15A-151(a) reads as rewritten:

"(a) The Administrative Office of the Courts shall maintain a confidential file for expungements containing the petitions granted under this Article and the names of those people for whom it received a notice under G.S. 15A-150. The information contained in the file may be disclosed only as follows:

- ...
- (4) Upon request of State or local law enforcement, if the criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5, ~~or 15A-145.6~~ 15A-145.6, 15A-145.8, or 15A-146 or employment purposes only.
- (5) Upon the request of the North Carolina Criminal Justice Education and Training Standards Commission, if the criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5, ~~or 15A-145.6~~ 15A-145.6, 15A-145.8, or 15A-146 for certification purposes only.
- (6) Upon request of the North Carolina ~~Sheriffs~~ Sheriffs' Education and Training Standards Commission, if the criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5, ~~or 15A-145.6~~ 15A-145.6, 15A-145.8, or 15A-146 for certification purposes only.

...."

SECTION 2.(c) This section becomes effective December 1, 2020.

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PART V. EFFECTIVE DATE

SECTION 5. Except as otherwise provided, this act is effective when it becomes law. In the General Assembly read three times and ratified this the 17th day of June, 2020.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 2:15 p.m. this 25th day of June, 2020